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ABSTRACT

This paper argues that the Children's Television Act of 1990 (CTA) required television broadcasters to air educational and informational children's programming, but Federal Communications Commission (FCC) policy did little to clarify the definition of "educational and informational." The paper first examines the historical usage/definitions of the phrase in children's programming debate since the 1960s, noting that the FCC refused to actively regulate programming. The next section of the paper discusses what has happened to the numerous bills regarding children's programming introduced beginning in 1977 designed to require greater quality and quantities of children's programming, leading up to President George Bush allowing the CTA to become law in 1990 without his signature. According to the paper, the FCC definition of educational and informational is "any television programming which furthers the positive development of children 16 years and under in any respect, including the child's cognitive/intellectual or emotional/social needs." The paper concludes that the FCC should provide a better operational definition of "educational and informational" if it expects broadcasters to comply with CTA. Contains 68 references. (RS)

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Defining "Educational and Informational" for Children's Television Programming

by

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ABSTRACT

The Children's Television Act of 1990 (CTA) required television broadcasters to air educational and informational children's programming, but FCC policy did little to clarify the definition of "educational and informational." This paper examines the historical usage/definitions of the phrase in children's programming debate; discusses what has happened since CTA became law; and concludes that the FCC should provide a better operational definition of "educational and informational" if it expects broadcasters to comply with CTA.

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Running Head: Defining "Educational & Informational"

Defining "Educational & Informational" for Children's Television Programming

Introduction

Thirty years after the Federal Communications Commission (FCC) first recognized children's programs as a necessary category of television programming, Congress enacted the Children's Television Act of 1990. The act requires broadcasters to air informational and educational children's programming and restricts the amount of advertising aired during children's programs. The FCC provided broadcasters with guidance for compliance in 1991 (FCC, 1991a; FCC, 1991b). In 1992, the Center for Media Education at the Institute for Public Representation (CME/IPR) issued a report that concluded that broadcasters were not making serious efforts to comply with this Act which generated much publicity (Center for Media Education, 1992). In response, in early 1993 both Congress and the FCC began to investigate licensee compliance with the Act. The House Subcommittee on Telecommunications and Finance held a hearing (Report on Comm., 1994), and the FCC issued a Notice of Inquiry (FCC, 1993). The results are pending.

After the Act became law and the FCC issued its guidance, broadcasters had several complaints. One was that the definition of "educational and informational" was vague and they were unsure how to comply with the requirement (FCC, 1991b). The FCC recognized this in its 1993 notice when it stated, "We believe that broadcasters may remain uncertain as to the scope of their programming obligations and that this uncertainty may largely explain the apparent lack of growth in children's programming" (FCC, 1993, p. 8). In the notice, the FCC proposed to adopt children's programming requirements and to define the type and amount of children's programming which would meet the requirements (FCC, 1993). In a December 1993 letter to new FCC Chairman Reed Hundt, the Institute for Public Representation urged the FCC to "promptly adopt the proposals" in the notice (IPR, 1993, p. 2) which would require a clearer definition from the FCC of "educational and informational" programming.

The FCC may reconsider its interpretation of the law or issue new rules. In either case, it will consider how Congress and the FCC itself have used the term "educational and informational." The FCC has discussed

children's programming since 1960, and Congress has considered legislation numerous times since 1977. Even more important, the phrase "educational and informational" has been used in conjunction with children's programming efforts for 20 years. "Educational" and "informational" are buzzwords which have been used for years during children's programming debates. It is therefore necessary to look at the historical use as well as the legislative intent of the phrase.

In examining the issue of children's programming and searching for a definition of "educational and informational," this paper: (a) reviews the history of children's programming debate in the broadcast and policy arenas from 1960 through the mid-1980s; (b) examines the history of children's television legislation; (c) discusses what has happened since the Act became law; and (d) concludes that the FCC should provide a better operational definition of "educational and informational" children's programming.

The Children's Programming Debate

The 1960s

From the advent of television until about the mid-1950s, the amount of programming and the number of viewers steadily increased (Gillingham, 1968). By the late 1950s, people had begun to express concern about the decline in programming quality. When journalist Edward R. Murrow spoke to the Radio and Television News Directors' Association in 1958, he described television as insulation and escapism from life's realities (TV Guide, 1958).

The FCC first recognized programs for children as a necessary programming element in a 1960 en banc programing report (FCC, 1960). During 19 days of hearings between December 1959 and February 1960, the FCC examined whether it had adequate standards for broadcast licensees' program selection or if the standards should be more specific. In its report, the Commission identified 14 "major elements usually necessary to meet the public interest, needs and desires of the community in which the station is located as developed by the industry, and recognized by the Commission" (p. 2314).[1] Those elements included religious, agricultural, news, public affairs, and children's programs, among others. The FCC emphasized that these were not rigid requirements but rather that programming should be molded to fit each community's needs (FCC, 1960).

FCC Chairman Newton N. Minow supported educational and informational children's programming. In his 1961 speech to the National Association of Broadcasters in which he called television a "vast

wasteland," Chairman Minow told broadcasters that television could teach and inform children, and that it was broadcasters' obligation to air quality programming (Minow, 1961, p. 24). He said that what broadcasters show on the public airwaves affects people's taste, knowledge, and opinions as well as their understanding of themselves and their world (Minow, 1961).

In the mid-1960s, as the U.S. experienced an increase in crime and civil unrest, media became a focal point again because of violence portrayed in the media (Baker & Ball, 1969). In 1968 Action for Children's Television (ACT) -- a consumer group that would play a key role in pushing for FCC action and federal legislation on children's programming -- was established in Boston by Peggy Charren and Evelyn Kaye (Kaye, 1979). ACT's members were concerned with the impact of television violence on children, the amount of commercials aired during children's television programming -- also referred to as the commercialism of children's programming -- and the quality and amount of children's programming that broadcasters aired (Alperowicz & Krock, 1983). By the end of the 1960s, ACT members were preparing to make children's programming an issue which they would carry into the next decade (Kaye, 1979).

The 1970s

In February 1970, ACT members met with FCC commissioners to discuss children's programming (Kaye, 1979). Later that spring, ACT filed briefs with the FCC proposing that it require stations to provide at least 14 hours per week of children's programming. The Commission subsequently initiated a Notice of Inquiry and Notice of Proposed Rule Making and set up a Children's Television Task Force to help explore the issues (FCC, 1971).[2] The Commission received more than 100,000 written comments and eventually issued the 1974 Children's Television Report and Policy Statement (FCC, 1974).

In the policy statement, the Commission said that broadcasters have a public service obligation to provide diverse programming to meet children's special needs because children lack intellectual sophistication and experience (FCC, 1974). The statement also called for programming designed for specific age groups since the intellectual development of pre-school children differs from that of older children (FCC, 1974). The FCC stated:

> [E]ducational or informational programming for children is of particular importance. It seems to us that the use of television to further the educational and cultural development of America's

> children bears a direct relationship to the licensee's obligation under the Communications Act to operate in the "public interest." Once these children reach the age of eighteen years they are expected to participate fully in the nation's democratic process. . . We believe that the medium of television can do much to contribute to this educational effort. (pp. 5-6)

The Commission rejected ACT's request that broadcasters be required to provide at least 14 hours of children's programming. But it said that station license renewal applications should "reflect a reasonable amount of programming" which educates and informs children, not just entertains them (FCC, 1974, p. 6). The statement did not quantify "a reasonable amount," but it noted that the programming can enhance children's understanding of many subjects including science, history, human relations, and other cultures as well as basic reading and math. It also noted that the programming should be "particularly designed with an educational goal in mind" (FCC, 1974, p. 7).

In 1976, the U.S. Court of Appeals, D.C. Circuit, affirmed the FCC's decision not to adopt ACT's proposed rules for improving children's programming (Action for Children's Television v. FCC, 1977). In 1978, ACT sought another rule making from the FCC, and the Commission initiated a second inquiry, reestablishing the Task Force to evaluate the effectiveness of the 1974 Policy Statement (FCC, 1978). The resulting report stated that children's educational and informational programming had not significantly increased (FCC, 1979).

The 1980s

In 1980, as a result of the 1979 report's findings (FCC, 1979), the Commission called for comments in a second rule making which contained five policy options (FCC, 1980). The options included: (1) rescinding the 1974 Policy Statement guidelines; (2) maintaining or changing the policy statement; (3) adopting temporary, mandatory programming rules; (4) adopting quantitative programming requirements; and (5) increasing the number of video outlets in each market. The definition for educational programming given in the rule making was similar to that in the 1974 Policy Statement which required the content to address such areas as science, music, drama, history, and basic reading and math skills (FCC, 1974).

With President Ronald Reagan's election and his appointment of FCC Chairman Mark Fowler, the 1980 rule making was ignored. Instead, the Fowler Commission sought to deregulate broadcasting (Kunkel &

Watkins, 1987). Deregulation "emphasizes the virtues of marketplace competition, suggesting that the public will ensure adequate service by supporting only those broadcast entities that deliver programming the audience desires" (Kunkel & Watkins, 1987, p. 378). Prior to Fowler, Commission Chairman Charles Ferris' era also tried to deregulate broadcasting but Ferris tried to exempt children's programming while Fowler did not (Kunkel & Watkins, 1987).

In 1984, the FCC issued a report on children's television programming and advertising practices stating that it would not adopt mandatory children's programming rules. It said that broadcasters must continue to meet the interests and needs of their communities, including children's special needs. In the report, the FCC made it clear that the 1974 Policy Statement was adequate and that it (the FCC) would work to increase video outlets, thus accepting two of the five policy options laid out in the 1980 notice while discounting the others (FCC, 1984). Advertising time restrictions which had been in place were eliminated also. The 1984 report stated that broadcasters' obligation to serve children:

> cannot be rationally viewed as simply emphasizing a need to broadcast programming that appeals to or is produced for children. Certainly no structural or market failure can be found that warrants any special concern in this regard; children watch enough television and no regulatory initiative need be introduced to get them to watch more. (FCC, 1984, p. 649)

The report deregulated children's television by allowing self-regulation by broadcasters -- they were to consider alternative children's programming available in their markets before determining how much children's programming they should air (FCC, 1984). Parts of the broadcast industry had recommended that the 1974 Policy Statement be phased out and that "Policy Statement language suggesting a special status for 'educational' or 'instructional' children's programming should be deleted," but the report did not address this directly (FCC, 1984, p. 639).

The 1984 report also said that the definition of children's programming was a public interest issue of program quality which had been brought up repeatedly as educational and instructional programs. The definition "relates not so much to the fringes of the category but to the basic purpose of the category itself" (FCC, 1984, p. 650). Where the 1974 statement required broadcasters to air programs which educated and

informed children and not just entertained them (FCC, 1974), this report said that any entertaining program which attracted a child audience would qualify as children's programming (FCC, 1984).

Commissioner Henry Rivera dissented. He interpreted the report to mean that licensees did not have to air programming which met the unique needs of children, which was geared to specific age groups, or "children's programs that are informational or educational. Apparently, broadcasters will be found responsive to unique needs of children as long as they air programming that children watch, whatever that may be" (FCC, 1984, p. 661). Rivera dissented for three reasons. First, he said that the report did not fully explain why changes in current programming policy were in the public interest. Second, he said that the statement that programming sufficiently meets children's needs was arbitrary. And third, the legal and policy arguments against children's programming guidelines were without foundation (FCC, 1984). In his dissenting statement, Rivera closed by saying:

> The majority has dishonored our most treasured national asset -- children. It has set the notion of enforceable children's programming obligations on a flaming pyre, adrift from federal concern, in the hope that the concept will be consumed in its entirety and never return to the FCC's shores. (FCC, 1984, p. 675)

As the FCC refused to actively regulate programming, legislators introduced bill after bill designed to require greater quality and quantities of children's programming. The first legislation was introduced in 1977, and the Children's Television Act became law in 1990.

Legislation

The Early Years: 1977-1987

Children's television programming legislation was first introduced before Congress in 1977 and then again in 1979. The next bill came in 1983, and bills were introduced almost every year after that until 1989. The definition of educational and informational programming, examples of programming thought to meet the definition, and the benefits of such programming were discussed repeatedly during each Congressional session which had a related bill pending. The definition, examples, and benefits varied only slightly from session to session.

The children's television bills featured at least one of three proposals: the formation of a national endowment which provides funding for the creation and production of children's programming, the requirement for children's educational and informational programming, and the limitation of commercialization of children's programming (which included limiting the number of commercials, requiring a separation between programs and commercials, and stopping the airing of program length commercials). Important to this paper are the proposals for national endowment legislation and the requirements for broadcasters to air children's educational and informational programming.

In 1977, Senator John Heinz introduced S. 1960 and in 1979 he introduced S. 1823, both proposing the establishment of a National Endowment for Children's Television. The endowment would provide grants for individuals or groups to create or produce "projects and productions which have substantive artistic or educational significance" for children (Sec. 3 (d)(1)). Although the bills did not define educational programming, S. 1823 stated that the television programming which children see should create an "intellectual and emotional environment which plays a decisive role in shaping individual development and perception" (Sec. 2 (a)(2)). The bills also would have established a National Council on Children's Television, consisting of a chairperson and 26 members appointed by the president. The council members would be private citizens "who are widely recognized for their broad knowledge of, or expertise in, or for their profound interest in, the education, development, and maturation of children or development of television programing for children" (S. 1823, Sect. 4(b)). The Senate did not act on either bill.

Rep. Tim Wirth proposed the Children's Television Education Act of 1983 (H.R. 4097) which would have required broadcasters to air programming that would enhance children's education at least one hour per day every weekday. The bill stated that educational television could teach children information, skills, values, and pro-social behavior; improve their reading and mathematical proficiency; entertain and motivate them; and encourage them to learn more about the world. The bill died at the end of the session.

A hearing before the House Subcommittee on Telecommunications, Consumer Protection, and Finance, and the House Subcommittee on Elementary, Secondary, and Vocational Education, examined ways that television could positively impact children's education (Potential of Television, 1983). During the hearing, Wirth talked about the Children's Television Education Act of 1983 and noted that while television could not

be a substitute for teachers in the schools, "it can certainly enhance a child's learning experience" (Potential of Television, 1983, p. 3).

In another hearing before the House Subcommittee on Telecommunications, Consumer Protection, and Finance, Sen. John Heinz defined children's programming as programming directed at children under the age of 17 "in content areas such as health, science, literature, and other cultural fields. This programming would take the form of dramatic, informational, and educational presentations" (Children and Television, 1983, p. 143).

The Children's Television Education Act of 1984, almost identical to the 1983 House bill, was introduced to increase the availability of children's educational television programming. Like the 1983 bill, S. 2909 required one hour per day on weekdays of children's educational programming and gave the same description of what educational television could teach children.

In a statement to the Senate when the bill was introduced, Sen. Frank Lautenberg said, "I am not talking about dry, dull programming that a child will avoid" (130 Cong. Rec. S9755, 1984). He listed "Sesame Street" as a program that would meet the requirements. In Sen. Howard Metzenbaum's statement, he said that "Mr. Rogers," "The Electric Company," and "Sesame Street" were examples of educational programming (130 Cong. Rec. S9755, 1984).

The Children's Television Act of 1985 was introduced by Rep. Wirth in the House as H.R. 3216, and by Sen. Lautenberg in the Senate as S. 1594. Action was not taken on these identical bills which required broadcasters to provide at least seven hours per week of educational programming for children which was more than the 1983 and 1984 bills. They also required the FCC to consider any petition to deny license renewal submitted by anyone about any broadcast station for noncompliance with programming requirements. The bills proposed amending the "Communications Act of 1934 to increase the availability of educational and informational television programs for children." While a clear definition of educational and informational is not given, the bills stated that television "can assist children in learning important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them" (Sec. 2(4)).

When Sen. Lautenberg and Rep. Wirth introduced the bills to the Senate and House, both noted that television could have a major impact on children by educating and informing them about the world (131 Cong. Rec. E3763, 1985; 131 Cong. Rec. S10914, 1985). In his same statement, Rep. Wirth listed "Sesame Street," "3-2-1 Contact," "Freestyle," "Mister Rogers' Neighborhood," "Fat Albert and the Cosby Kids," and "Reading Rainbow" as children's educational programming which taught a better understanding of science, greater reading proficiency, altruism, and cooperation.

In 1987, Sen. Lautenberg and Tim Wirth -- now a senator also -- introduced the Children's Television Education Act of 1987, S. 1505, which required broadcasters to air seven hours per week of children's educational and informational programming. The bill also required the FCC to begin an inquiry into program length commercials. When he introduced the bill, Sen. Lautenberg identified a basic goal of the U.S. communications policy: "to educate, to inform, and serve the children of this nation" (133 Cong. Rec. S10213). He also talked about the American education system and how television played a role in the education of children. He said, "America's educational system must work harder and harder to prepare our children to compete. Television's potential looms even larger" (133 Cong. Rec. S10213). The Senate did not act on this bill.

In 1987 and 1988, the Children's Television Advertising Practices Act were the first pieces of legislation which contained advertising requirements. Rep. Terry Bruce introduced H.R. 3288, and Sen. Howard Metzenbaum introduced S. 2071, nearly identical bills. They required broadcasters to adhere to advertising restrictions during children's programming, restrictions which the 1984 deregulation report eliminated (FCC, 1984). Action was not taken on either bill.

Passage and Pocket Veto

The Children's Television Practices Act of 1988 passed in both the House and the Senate, but President Reagan pocket vetoed it on Nov. 5, 1988. He cited First Amendment concerns and stated that the Constitution does not give the federal government the power to oversee broadcasters' programming choices. Key Republicans had supported the bill, as had the National Association of Broadcasters, which saw the bill as a way to improve relations with lawmakers (GOP Advice, 1988).

Rep. John Bryant introduced the 1988 act, H.R. 3966, which required broadcasters to provide children's educational and informational programming and reinstated restrictions on advertising which had been eliminated during deregulation. The original version of the bill required seven hours per week of children's programming, but this quantified programming requirement was dropped from the final version.

In House debate before the bill passed, Rep. Edward Markey, chairman of the Subcommittee on Telecommunications and Finance, said that the quality of television programming was poor and that the bill would help. He said that the bill "ensures that our children will learn more from television than the wonders of the latest toy or cereal. . . television should be nutrition for the mind, not just a junk food diet to satisfy commercial appetites" (134 Cong. Rec. H3980, 1988). The NAB, the Association of Independent Television Stations, the American Association of Advertising Agencies, and other organizations testified in hearings of the House Subcommittee on Telecommunications and Finance that they believed that while children are an audience with special needs, Congress should not set programming requirements. Action for Children's Television, the American Academy of Pediatrics, and the American Psychological Association, among others, disagreed (Commercialization, 1987/1988).

During Senate consideration of the act, Sen. Wirth described current commercial television as the "vineyard of irrepressible avarice" (134 Cong. Rec. S16857 at 16860, 1988). He said that the main problem that needed to be addressed was the lack of children's educational and informational programs, programs specifically designed for children's limited capabilities to process information (134 Cong. Rec. S16857, 1988). Sen. Wirth said that the Founding Fathers believed that a democracy must have an educated electorate in order to function, and they would be horrified by the state of education in the U.S. today. He noted that 25 percent of high school students drop out, only one in 11 eligible children are funded for Head Start, some inner city schools are battlegrounds, and the U.S. has more than 30 million illiterate adults (134 Cong. Rec. S16857, 1988).

Also during Senate consideration, Sen. Daniel Inouye, Chairman of the Communications subcommittee, said that television is an effective tool for educating children. Sen. Inouye said, "In view of the importance of educating our youth and the ever rising costs of education, it is imperative that we take advantage of every tool possible to expand the knowledge of our children" (134 Cong. Rec. S16857, 1988).

The 1988 legislation was passed by both the House and the Senate but was pocket vetoed by President Reagan.

1989 Legislation

Two of the five children's television bills introduced in 1989 were passed as companion legislation and became the Children's Television Act of 1990. Of the other three bills, only one passed in the Senate but did not become law. The three unsuccessful bills will be examined first.

Sen. Howard Metzenbaum introduced the Children's Television Act of 1989 (S. 707). This was identical to the bills in the House and Senate in 1988 which set limits on advertising during children's programming and required the FCC, at license renewal time, to consider whether broadcasters had met children's educational and informational program needs. Sen. Wirth introduced the Children's Television Education Act of 1989, S. 1215, which set limits on advertising and required the FCC to consider whether broadcasters met children's educational and informational programming needs. Wirth's bill also required broadcasters to identify programs in a public notice "specifically designed to serve the educational and informational needs of both preschool and school-aged children" (Sec. 3(b)(2)).

A Senate Subcommittee on Communications hearing considered both bills. Sen. Daniel Inouye, subcommittee chairman, and Sen. Al Gore, member of the Committee on Commerce, Science, and Transportation, along with Sen. Wirth, Sen. Metzenbaum, ACT founder Peggy Charren, and the National Education Association, among others, gave statements about the importance of quality children's programming, the educational crisis in the U.S., the need for more than marketplace forces in children's programming issues, broadcasters' public interest obligation to children, and the positive and negative teaching powers of television.

Sen. Gore said that television programming was scandalous because of the things it teaches children. He said, "We are strip mining our children's minds and doing it for a commercial profit without any concern for the longer term consequences for them and for our society. It is really a scandal of the first order of magnitude, and American parents know this" (Children's TV, 1989, p. 3). Peggy Charren said that although ACT did not object to broadcasters' citing appropriate adult fare as part of their efforts to meet children's needs, children need their own programming as well. She said that the existence of children's libraries was

proof that adult fare cannot meet children's educational needs, but she did not define educational or informational (Children's TV, 1989).

The president of the NAB, Edward O. Fritts, said that broadcasters were opposed to S. 1215 because it specifically tried to legislate program content by requiring the FCC to determine whether broadcasters showed programs specifically created for school-aged and preschool children. On the other hand, he said that broadcasters would accept the Metzenbaum bill, S. 707, because it was not as specific and required the FCC to "review a licensee's effort at serving young people in its overall programming effort" (Children's TV, 1989, p. 53). Dewitt F. Helm, Jr., president of the Association of National Advertisers, said during the hearing that the ANA was opposed to both bills. Helm also said that placing restrictions on advertising time in children's programs would be counterproductive -- producers and advertisers needed the flexibility to balance children's needs with monetary requirements (Children's TV, 1989).

Sen. Inouye introduced a bill to establish the National Endowment for Children's Educational Television; it passed in the Senate but did not become law. S. 797 would provide grants for the development of children's educational programming, and establish an advisory council on children's educational programming. Section (i)(1) of the bill defined educational programming for children as programming aimed at children 16 and under and which was "designed for the intellectual development of those children, except that such term does not include any television program which is directed to a general audience but which might also be viewed by a significant number of children."

A Senate hearing before the Subcommittee on Communications addressed the national endowment (Education, 1989). Dr. Aletha Huston, Co-Director for the Center for Research on the Influence of Television on Children at the University of Kansas, said that people often start watching television as infants and therefore television reaches people much earlier than formal education. She espoused television's positive educational capabilities, and said that there was a difference between educational and entertainment programming. She described one important distinguishing feature as "the fact that [educational programs have] a set of goals. They are based on some sort of a plan that says, here are the messages we would like to transmit" (Education, 1989, p. 52).

A report to the Senate by the Committee on Commerce, Science, and Transportation which recommended passage of the bill examined public television, the only centralized source of funding for children's programming. The report cited high costs for production, research, and educator involvement, as a major reason why it is difficult to increase the number of quality children's educational programs. According to the report, broadcasters have few incentives to develop children's programs because of the high costs and small profits (S. Rep. No. 66, 1989). The report listed children's programs which were considered educational including "The Electric Company," "Reading Rainbow," "Square One TV," and "3-2-1 Contact." Other positively identified programs included "Fat Albert and the Cosby Kids," "DeGrassi Junior High," and "Mr. Rogers' Neighborhood" (S. Rep. No. 66, 1989).

Dr. David Hamburg, President of the Carnegie Corp. of New York, testified at a hearing that television can teach many skills and behaviors that are important to children's interpersonal and intellectual development. He said that television can increase self-esteem, stimulate an interest in and curiosity about problem-solving, facilitate reading skills, portray learning as fun, stimulate respect for human diversity, and connect critical viewing skills with higher order thinking skills. Furthermore, television is a powerful tool which can be a constructive way to "promote compassionate understanding, non-violent problem-solving and decent inter-group relations, highlighting shared human experience" (Education, 1989, p. 23).

"Sesame Street," which the Carnegie Corp. helped develop, was cited repeatedly in hearings and debates as an educational program for children. Dr. Hamburg said that "Sesame Street" creators had clearly defined goals for the program which included showing children non-violent options for resolving conflicts, teaching children to understand others' points of view, and teaching them cooperation, sharing, taking turns, and compromising. "And finally, importantly, it built a sense of identity and self-worth" (Education, 1989, p. 24).

Another national endowment bill, S. 1992, eventually passed as a companion piece to H.R. 1677 which was enacted into law. H.R. 1677 required the FCC to review stations' license renewal applications to ensure that they had served children's informational and educational programming needs and had met advertising duration limitations. The bill also required the FCC to complete a proceeding on program length commercials, and it amended the Communications Act of 1934 to establish the National Endowment for

Children's Educational Television. In a hearing before the House Subcommittee on Telecommunications and Finance, Rep. Matthew Rinaldo said that H.R. 1677 "simply reaffirms the essential obligation of television stations to serve children and not just entertain them" (Children's Television, 1989, p. 34).

In the same House hearing, Act III Broadcasting supported H.R. 1677. However, the Association of National Advertisers and the American Association of Advertising Agencies opposed the bill, as did the NAB which cited the need for advertising to support high production costs and that the children's video market was both "prolific and dynamic" (Children's Television, 1989, p. 112).

An Energy and Commerce Committee report to the House stated that a variety of programming could be used by broadcasters to meet the needs of the child audience (H.R. Rep. No. 385, 1989). But, according to the report, stations were expected to provide some programming specifically designed to meet children's educational and informational needs. Broadcasters would be required to demonstrate they were fulfilling this obligation, but "[u]nder this legislation, the mix is left to the discretion of the broadcaster in this area, as in so many others" (H.R. Rep. No. 385, 1989, p. 17).

In October 1990, while letting it be known that he did not support the Act, President George Bush allowed the Children's Television Act to be enacted into law without his signature. He invited a court challenge of the law and the scarcity rationale upheld in Red Lion v. FCC (1969), and he suggested that spectrum scarcity was a dated concept because other means of communication such as cable now exist (Court Challenge, 1990).

The Act From 1990 to 1993

The Children's Television Act of 1990 requires the FCC to examine stations' license renewal applications to ensure that stations were complying with their children's programming and advertising obligations. The FCC would check to see that licensees had served children's educational and informational needs through their overall programming, including specific programming for children. The FCC could also consider nonbroadcast efforts which might have informational and educational value, as well as any efforts by the licensee to help support educational and informational children's programming efforts by other broadcast stations in the same market.

The law itself did not clearly define "educational and informational" programming although it did say that television could help children to "learn important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them" (Sec. 101 (1)). The Congressional intent, as demonstrated throughout the hearings and debates, was that programming be designed specifically for children to achieve any number of the following: enhance children's cognitive and intellectual abilities, improve their reading and math proficiencies, teach them about the world, and teach them various skills, positive values and pro-social behaviors.

The FCC policy regarding broadcaster compliance with the Act did not give a specific operational definition of "educational and informational" programming (see FCC, 1991a, and FCC, 1991b). The FCC said in 1991 that some parties did not want the FCC to establish any definition, while others wanted a very specific definition that would limit broadcasters to airing non-fiction programming. In the report, the FCC defined children's educational and informational programming as "any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's cognitive/intellectual or emotional/social needs" (FCC, 1991a, p. 2121).

On reconsideration, in reference to an NAB complaint that the definition of educational and informational programming was too broad, the FCC stated that its definition was in agreement with Congressional intent which required acceptable programming that served children's informational and educational needs. "In addition, we believe that such latitude is necessary to foster the creativity that will result in programming both beneficial and attractive to children. We thus decline to modify our definition" (FCC, 1991b, p.5099).

In 1992, a year after the policy went into effect, a Center for Media Education and the Institute for Public Representation (CME/IPR) report said that broadcasters were not fulfilling their obligations under the act (Center for Media Education, 1992).[3] Representatives from CME/IPR had reviewed 58 stations' license renewal applications to determine whether or not stations were fulfilling their children's programming requirements under the Act. The FCC required stations to include in their license renewal applications a summary of children's programming records, while the records themselves would remain on file with the stations (CME, 1992). One study of the FCC's implementation process concluded that due to the vagueness of

the law and the policy, the FCC may never be able to implement the Congressional intent of the CTA's programming requirement (Matthews & Neff, 1994).

Shortly after the CME/IPR report (1992) was issued, the FCC began looking more closely at educational and informational children's programming in the license renewal process, according to the chief of the FCC's Video Services Division, Barbara Kriesman (personal communication, April 6, 1993). While Ms. Kriesman could not identify the specific changes in the review of license renewal applications (personal communication, April 6, 1993), seven stations' license renewals were delayed (Zoglin, 1993). According to Laura Johnson, industry analyst for the FCC, those stations were asked to provide clarification on some of the programming. None were denied license renewal (Matthews, 1993b).

In March 1993, the FCC issued a Notice of Inquiry (FCC, 1993), and a House Energy and Commerce Subcommittee on Telecommunications and Finance hearing reviewed children's television programming (Flint, 1993). Both were possibly in response to the publicity generated by the CME/IPR (1992) report, according to an article in Broadcasting & Cable magazine (Flint, 1993) and to the associate director for IPR, Angela Campbell (personal communication, Dec. 7, 1993).

The 1993 FCC notice stated that broadcasters' performance so far had not met the goals of the Act. Because of the lack of increase in children's educational and informational programming, the FCC noted, "We believe that broadcasters may remain uncertain as to the scope of their programming obligations and that this uncertainty may largely explain the apparent lack of growth in children's programming" (FCC, 1993). The NOI was initiated to see whether the policy should be modified to identify the amount and type of programming which broadcasters must air to serve the educational and informational needs of children (FCC, 1993).

The House subcommittee hearing reviewed broadcasters' adherence to the Act as well as the FCC enforcement of it. More than 320 license renewal applications had been reviewed. The subcommittee said that the applications looked acceptable so far, given the limited amount of time broadcasters had had to comply, but it wanted to ensure that licensees knew that Congress still expected more and better quality children's programming (FCC, 1993).

As of November 1993, the FCC was reviewing the two to three dozen comments and replies it received to determine if any action needs to be taken (Matthews, 1993b). The Association of Independent Television Stations (INTV) letter provided a list of newly produced children's educational programming. INTV said that in light of this new programming, the FCC might not need to show further concern about broadcasters' compliance with the Act. The Institute for Public Representation wrote its December 1993 letter to counter the INTV stance and to ask the FCC to establish the amount and type of children's programming which would meet the requirements (IPR, 1993).

The FCC, in effect, has already admitted that the policy on educational and informational programming may make it difficult for broadcasters to fulfill their requirements. It now needs to take steps to remedy the situation.

Discussion/Conclusion

Children's programming has been a repeated topic of discussion and action by the FCC since 1960, and the phrase "educational and informational" has been a part of that discussion. Congress found the phrase important enough to incorporate into broadcasters' programming requirements in the Children's Television Act of 1990. Yet meeting those requirements has been difficult for broadcasters.

One of the complaints about the initial FCC policy on the Act was that the definition of educational and informational was too broad. The FCC definition is "any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's cognitive/intellectual or emotional/social needs" (FCC, 1991a, p. 2121). The FCC said that it gave a broad definition intentionally to allow broadcasters some creativity in their programming solutions (FCC, 1991b). Definitions found in the legislative and regulatory history are equally broad.

The FCC may have left the definition broad for other reasons, too. In FCC v. Pacifica Foundation (1978), the Supreme Court found that children are an audience with special needs and considerations and therefore should be protected. In spite of this, the FCC must act carefully in instances where its actions might be misconstrued as censorship or as otherwise limiting broadcasters' First Amendment rights by requiring very specific program content. And although the FCC has said that programs that meet children's needs are important, it has never done more than shake its proverbial finger at broadcasters. Neither the FCC nor

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Congress has given broadcasters a clear operational definition of educational and informational programming. The First Amendment explanation is not new, but rather has been cited throughout Congressional and FCC discussion and debate.

Even though the phrase "educational and informational" has been used since 1960 in countless instances by the FCC and Congress, the FCC does not have a clear operational definition. It was not until after the FCC policy on the Children's Television Act of 1990 went into effect and the CME/IPR reported noncompliance that the FCC recognized that the policy may lack appropriate guidance for broadcasters. The definition -- while broad to allow broadcasters flexibility -- is neither understandable on an operational level nor enforceable. Until the definition is something that can be understood and followed by broadcasters and enforced by the FCC's own staff, the FCC cannot expect compliance.

ENDNOTES:

1. The FCC may publish a Notice of Inquiry (NOI) to solicit comments on a particular issue. If the FCC has specific regulatory proposals, it publishes the proposed rules in a Notice of Proposed Rule Making (NPRM) in the Federal Register and solicits comments. The NPRM is considered the stronger action.

2. The Communications Act of 1934 is the principal law which governs television (47 USC). Section 307a makes it clear that the broadcast channels are to be allocated to applicants which will most likely serve the "public convenience, interest, or necessity."

3. The CME/IPR report (1992) gave the following findings:

    1. Our examination reveals that overall, television broadcasters are not making a serious effort to adequately serve the educational and informational needs of children.
    2. Many stations are not providing the minimum information required by the Commission.
    3. While a handful of new "specifically designed" informational and educational programs for children are now airing on a regular basis on some stations, many licensees are treating them as token "FCC shows" and scheduling them in marginal time periods.
    4. Many broadcasters are responding to the new law's programming requirements primarily by inserting "pro-social" content or "educational moments" into entertainment programs, or by redefining standard cartoon fare in educational terms.
    5. Many broadcasters are coming up with new descriptions of old programs rather than finding new programs to meet the mandate of the law.
    6. Most of the programming that broadcasters cite in their efforts to comply with the law falls into the vague category of "pro-social," while little of the programs appear to be serving the informational needs of children.
    7. Very few stations are airing any locally-produced programs which are designed to serve the educational and informational needs of children.
    8. Some stations are including programs in their filings that are unrelated to the requirements of the Children's Television Act. (CME, 1990, pp. 3-9)

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